TAN TIEW LAN

v.

LUCKSOON METAL WORKS SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. P 215 OF 1984]
20 MARCH 1985

CIVIL PROCEDURE: *Service of writ of summons and statement of claim - Served at principal place of business - Whether defective.*

LABOUR LAW: *Social security - Insured person - Whether can elect to sue for damages under the common law.*

In an application to set aside the interlocutory judgment in default of appearance obtained by the plaintiff, the defendant relies on the ground that the service of writ and statement of claim was defective and that being an insured person under the Employees Social Security Act 1969 ("the Act"), the plaintiff was barred from suing her employer under the common law.

It was not disputed that the writ of summons and the statement of claim were served at the defendant's principal place of business.

It was contended by the plaintiff that though she was an insured person, she had not made any claims under the Act and thereby had elected to waive her rights under the Act and therefore could sue for damages under the common law.

Held:

[1] Under O. 62 r. 4(1)(b) of the Rules of the High Court 1980 the writ of summons and the statement of claim are to be served at the defendant's registered office. Therefore, service of the writ of summons and the statement of claim were defective as they were not served at the defendant's registered office.

[2] Once the plaintiff is an insured person under the Act, it is immaterial that she chose not to enforce her right to seek compensation under the Act. Sections 31 and 42 of the Act constitute a complete bar to any claim against the employer under the common law.

[Defendant's application allowed with costs]

Cases referred to:
Tan Peng Loh v. Lee Aik Fong & Anor. [1982] 1 MLJ 74
Che Noh b. Yacob v. Seng Hin Rubber (M) Sdn. Bhd. [1982] 1 MLJ 80

Legislation referred to:
Employees' Social Security Act 1969, ss. 31, 42
Rules of the High Court 1980, O. 62 r. 4(1) (b)

For the plaintiff - S.Y. Lai
For the defendant - B.K. Sia

JUDGMENT

Siti Norma Yaakob J:

In this application to set aside the interlocutory judgment in default of appearance obtained by the plaintiff on 4 May 1984, the defendant relies on 2 grounds.

(1) Service of the writ of summons and Statement of Claim was defective as they were not served at the defendant's registered office.

(2) Being an insured person under the Employees Social Security Act 1969 (the Act), the plaintiff is barred by s. 31 of the Act from suing her employer, the defendant, at common law or under any other written law.

It is not disputed that the writ of summons and Statement of Claim were served on the defendant on 23 March 1984, at No. 21, Batu 6 1/2, Jalan Puchong, Petaling, Kuala Lumpur and that the defendant did not take any action on the writ until it was served with a notice of motion wherein the plaintiff seeks to move the Court to assess general and special damages. Only then did the defendant sought legal advice resulting in this present application to have the default judgment set aside.

The defendant's registered office is at No. 18A, Persiaran Ara Kiri, Lucky Garden, Off Jalan Bangsar, Kuala Lumpur, but runs a factory producing metal sheets at No. 21, Batu 6 1/2, Jalan Puchong, Petaling, Kuala Lumpur. The plaintiff was employed by the defendant at this factory as a labourer and it was to this factory that the writ of summons and statement of claim were sent by prepaid registered post. But on 1 March 1984, the defendant had moved the factory to No. 19, Jalan Paku, Kawasan MIEL 16/6, Shah Alam, Selangor and service of the writ of summons and statement of claim on 23 March 1984 was therefore not made at the defendant's principal place of business. Nonetheless, the defendant admitted receiving the writ and statement of claim and upon this admission, the plaintiff contends that the defendant cannot now complain that the service is defective. Moreover, searches made by the plaintiff at the Registry of Companies on 12 October 1983 and 19 November 1984, reveal that the defendant's principal place of business was at the Puchong address. Here I pause to state that when the first search was made on 12 October 1983, the business was still being conducted at Puchong but by 23 March 1984, when the writ and statement of claim were served, it had already moved to Shah Alam. As for the second search on 19 November 1984, the plaintiff relied on information shown on a Form 16A charge dated 22 November 1983. The defendant's address given in the charge in the Puchong address and this information is perfectly correct as at 22 November 1983, the defendant's principal place of business was still at Puchong.

As service of the writ of summons and statement of claim is purported to have been effected pursuant to O. 62 r. 4(1)(b) of the Rules of the High Court 1980 which stipulates that the writ and statement of claim are to be served at the defendant's registered office, the plaintiff had instead chose to serve the papers at the defendant's principal place of business. The defendant's registered office is at No. 18A, Persiaran Ara Kiri, Lucky Garden, Off Jalan Bangsar, Kuala Lumpur and this is known to the plaintiff as she had pleaded so in para. 1 of her statement of claim. Despite this knowledge, she chose to serve the papers at the defendant's place of business instead which was not the principal place of business then and this in itself is clear proof that service of the writ of summons and statement of claim is defective, as they were not served at the defendant's registered office.

The plaintiff admits that she is an insured person under the Act, but maintains that as she had not made any claim to the Social Security Organization set up to administer the Social Security Scheme under the Act, she had thereby elected to waive her right to claim any benefit under the Act and chose to sue the defendant for damages for the injuries suffered whilst an employee of the defendant. There is no merit to this contention as can be seen from the decisions reached in *Tan Peng Loh v. Lee Aik Fong & Anor.* [1982] 1 MLJ 74 and *Che Noh b. Yacob v. Seng Hin Rubber (M) Sdn. Bhd.* [1982] 1 MLJ 80. In these cases, the Federal Court held that once a person is an insured person under the Act, s. 31 and 42 of the Act constitute a complete bar to any claim against the employer under common law. The Court also held that the wordings of s. 31 and 42 of the Act are too clear to cause any ambiguity. It is therefore immaterial that the plaintiff chose not to enforce her right to seek compensation under the Act as the operative words under s. 31 is that once an employee is a contributor to the Social Security Scheme, he is barred from making any claim under common law.

As for the plaintiff's contention that the amount of compensation awarded under the Act is unrealistic and inadequate, her only recourse is to question the Act itself by suing the authorities but until that happens and the law is amended, she is governed by the provisions of the Act.

For the above reasons, I had granted the defendant's application to set aside the interlocutory judgment in default of appearance dated 4 May 1984, and allowed the defendant to appear and file a statement of defence to this action. In allowing this application, I had also granted costs to the defendant.

Also found at [1985] 2 CLJ 169